

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE) MDL NO. 1456
LITIGATION) Civil Action No. 01-12257-PBS
) Subcategory Case No: 03-10643-PBS
THIS DOCUMENT RELATES TO:)
) Judge Patti B. Saris
<i>The City of New York, et al.</i>)
)
v.)
)
<i>Abbott Laboratories, et al.</i>)

**REPLY AFFIDAVIT OF JOANNE M. CICALA IN SUPPORT OF MOTION FOR
PARTIAL SUMMARY JUDGMENT ON ISSUES RELATING TO THE
FEDERAL UPPER LIMIT AND UNDER NEW YORK SOCIAL SERVICES LAW
§ 145-B**

Joanne M. Cicala, being duly sworn, deposes and says as follows:

1. I am a partner at Kirby McInerney LLP and counsel for the City of New York and all New York Counties in MDL 1456, except Nassau and Orange. In this capacity, I am personally knowledgeable about the matters set forth herein. This reply affidavit is submitted in further support of Plaintiffs' Motion for Partial Summary Judgment on Issues Relating to the Federal Upper Limit and Under New York Social Services Law § 145-b.

2. Attached as Exhibit A to each of Plaintiffs' Local Rule 56.1 Statements of Material Facts as to the Individual Defendants, filed May 15, 2009,¹ is a true and

¹ Plaintiffs' Local Rule 56.1 Statement of Undisputed Material Facts as to Barr Laboratories, Inc. [Dkt: 6062; NYDkt: 63] ("Barr 56.1 [Dkt: 6062; 63]"); Plaintiffs' Local Rule 56.1 Statement of Undisputed Material Facts as to Dey L.P. and Dey, Inc. [Dkt: 6063; NYDkt: 64] ("Dey 56.1 [Dkt: 6063; 64]"); Plaintiffs' Local Rule 56.1 Statement of Undisputed Material Facts as to Ethex Corporation [Dkt: 6064; NYDkt: 65] ("Ethex 56.1 [Dkt: 6064; 65]"); Plaintiffs' Local Rule 56.1 Statement of Undisputed Material Facts as to Ivax Corporation and Ivax Pharmaceuticals Inc. [Dkt: 6065; NYDkt: 66] ("Ivax 56.1 [Dkt: 6065; 66]"); Plaintiffs' Local Rule 56.1 Statement of Undisputed Material Facts as to Mylan Laboratories Inc., Mylan Pharmaceuticals Inc. and UDL Laboratories Inc. [Dkt: 6066; NYDkt: 67] ("Mylan 56.1 [Dkt: 6066; 67]"); Plaintiffs' Local Rule 56.1 Statement of Undisputed Material Facts as to Par Pharmaceuticals Companies, Inc. and Par Pharmaceutical, Inc. [Dkt: 6067; NYDkt: 68] ("Par 56.1 [Dkt: 6067; 68]"); Plaintiffs' Local Rule 56.1 Statement of Undisputed Material Facts as to Purepac Pharmaceutical Co. [Dkt: 6068; NYDkt: 69] ("Purepac 56.1 [Dkt: 6068; 69]"); Plaintiffs' Local Rule 56.1 Statement of Undisputed Material Facts as to Boehringer Ingelheim Roxane, Inc. [Dkt: 6069; NYDkt: 70] ("Roxane 56.1 [Dkt: 6069; 70]"); Plaintiffs' Local Rule 56.1 Statement of Undisputed Material Facts as to Sandoz, Inc. [Dkt: 6070; NYDkt: 71] ("Sandoz 56.1 [Dkt: 6070; 71]"); Plaintiffs' Local Rule 56.1 Statement of Undisputed Material Facts as to Teva Pharmaceuticals USA, Inc. [Dkt: 6071; NYDkt: 72] ("Teva 56.1 [Dkt: 6071; 72]"); Plaintiffs' Local Rule 56.1 Statement of Undisputed Material Facts as to Schering Corporation, Schering-Plough Corporation and Warrick Pharmaceuticals Corporation [Dkt: 6072; NYDkt: 73] ("Schering-Warrick 56.1 [Dkt: 6072; 73]"); Plaintiffs' Local Rule 56.1 Statement of Undisputed Material Facts as to Watson Pharmaceuticals, Inc. and Watson Pharma, Inc. [Dkt: 6073; NYDkt: 74] ("Watson 56.1 [Dkt: 6073; 74]"); and,

complete copy of an exhibit that sets forth each defendant's published AWP's and WAC's for the drug and NDCs at-issue in plaintiffs' motion and any operative Federal Upper Limit ("FUL"). These data fields contain true and complete extracts from the First Databank NDDF data file produced to plaintiffs in this litigation by FirstDatabank (Alabama Production, FDB-AWP 030785 – 030795). This is the same source of AWP, WAC and FUL data used by Defendants' expert Dr. Addanki. See Affidavit of Dr. Sumanth Addanki dated May 15, 2009 [Dkt# 6056] at Exhibit 2 (identifying "First DataBank (Alabama Production) Data and NDDF (National Drug Data File)TM Documentation Manual (Rev. April 2000)" as a Data source). The AMPs set forth in the referenced Exhibit A's are true and complete copies of the relevant AMPs produced to plaintiffs by each defendant involved in the instant motion, as noted on the Exhibit A's themselves.

Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Barr Laboratories, Inc.

3. Attached as Exhibit A to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Barr Laboratories, Inc. is a true and correct copy of excerpts from the transcript of the Deposition of Barr Laboratories, Inc.'s 30(b)(6) Witness (Timothy Catlett) dated May 7, 2008.

4. Attached as Exhibit B to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Barr Laboratories, Inc. is a true and correct copy of Exhibit 1 to the Deposition of Barr Laboratories, Inc.'s 30(b)(6) Witness (Timothy Catlett) dated May 7, 2008.

Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Ethex Corporation

5. Attached as Exhibit A to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Ethex Corporation is a true and correct copy of excerpts from the transcript of the Deposition of Ethex Corporation 30(b)(6) witness (Chris Keith) dated June 24, 2008

Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Mylan Laboratories Inc., Mylan Pharmaceuticals Inc. and UDL Laboratories Inc.

6. Attached as Exhibit A to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Mylan Laboratories, Inc., Mylan Pharmaceuticals Inc. and UDL Laboratories Inc. is a true and correct copy of excerpts from the transcript of the Deposition of Robert G. Cunard dated October 26, 2007.

7. Attached as Exhibit B to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Mylan Laboratories Inc., Mylan Pharmaceuticals Inc.

Plaintiffs' Local Rule 56.1 Statement of Undisputed Material Facts as to Wyeth [Dkt: 6074; NYDkt: 75] ("Wyeth 56.1 [Dkt: 6074; 75]").

and UDL Laboratories Inc. is a true and correct copy of excerpts from the transcript of the Deposition of Robert George Cunard dated October 30, 2008.

8. Attached as Exhibit C to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Mylan Laboratories Inc., Mylan Pharmaceuticals Inc. and UDL Laboratories Inc. is a true and correct copy of excerpts from the transcript of the Deposition of Joseph Duda, R.Ph., dated April 16, 2008.

9. Attached as Exhibit D to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Mylan Laboratories Inc., Mylan Pharmaceuticals Inc. and UDL Laboratories Inc. is a true and correct copy of excerpts from the transcript of the Deposition of Mylan Laboratories' 30(b)(6) Witness (Brian S. Roman) dated August 2, 2007 (Rough copy).

Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Par Pharmaceuticals Companies, Inc. and Par Pharmaceutical, Inc.

10. Attached as Exhibit B to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Par Pharmaceuticals Companies, Inc. and Par Pharmaceutical, Inc. is a true and correct copy of excerpts from the transcript of the Deposition of Par Pharmaceuticals' 30(b)(6) Witness (Nick DiMaio) dated May 6, 2008.

Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Purepac Pharmaceutical Co.

11. Attached as Exhibit A to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Purepac Pharmaceutical Co. is a true and correct copy of excerpts from the transcript of the Deposition of Purepac Pharmaceutical Co.'s 30(b)(6) Witness (Patricia O'Malley) dated June 20, 2008.

12. Attached as Exhibit B to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Purepac Pharmaceutical Co. is a true and correct copy of excerpts from the transcript of the Deposition of Roberto Miranda dated October 19, 2007.

13. Attached as Exhibit C to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Purepac Pharmaceutical Co. is a true and correct copy of excerpts from the transcript of the Deposition of Bradford Cunningham dated October 23, 2007.

14. Attached as Exhibit D to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Purepac Pharmaceutical Co. is a true and correct copy of excerpts from the transcript of the Deposition of Purepac Pharmaceutical Co.'s 30(b)(6) Witness (Patricia O'Malley) dated September 19, 2007.

Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Schering Corporation, Schering-Plough Corporation and Warrick Pharmaceuticals Corporation

15. Attached as Exhibit A to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Schering Corporation, Schering-Plough Corporation and Warrick Pharmaceuticals Corporation is a true and complete copy of Exhibit 62 marked at the Deposition of Warrick Pharmaceuticals Corporation's 30(b)(6) Witness (Harvey Weintraub) dated September 20, 2006 (Vol. 3).

16. Attached as Exhibit B to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Schering Corporation, Schering-Plough Corporation and Warrick Pharmaceuticals Corporation is a true and correct copy of excerpts from the transcript of the Deposition of Warrick Pharmaceuticals Corporation's 30(b)(6) Witness (Harvey Weintraub) dated September 18-22, 2006 (Vol. 1, 3, 4).

17. Attached as Exhibit C to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Schering Corporation, Schering-Plough Corporation and Warrick Pharmaceuticals Corporation is a true and correct copy of Exhibit 63 marked at the Deposition of Warrick Pharmaceuticals Corporation's 30(b)(6) Witness (Harvey Weintraub) dated September 20, 2006 (Vol. 3).

18. Attached as Exhibit D to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Schering Corporation, Schering-Plough Corporation and Warrick Pharmaceuticals Corporation is a true and correct copy Exhibit 33 marked at the Deposition of Warrick Pharmaceuticals Corporation's 30(b)(6) Witness (Harvey Weintraub) dated September 19, 2006 (Vol. 2).

19. Attached as Exhibit E to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Schering Corporation, Schering-Plough Corporation and Warrick Pharmaceuticals Corporation is a true and correct copy of Exhibit 73 marked at the Deposition of Warrick Pharmaceuticals Corporation's 30(b)(6) Witness (Harvey Weintraub) dated September 20, 2006 (Vol. 3).

20. Attached as Exhibit F to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Schering Corporation, Schering-Plough Corporation and Warrick Pharmaceuticals Corporation is a true and correct copy Exhibit 75 marked at the Deposition of Warrick Pharmaceuticals Corporation's 30(b)(6) Witness (Harvey Weintraub) dated September 21, 2006 (Vol. 4).

21. Attached as Exhibit G to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Schering Corporation, Schering-Plough Corporation and Warrick Pharmaceuticals Corporation is a true and correct copy of Exhibit 71 to the Deposition of Warrick Pharmaceuticals Corporation's 30(b)(6) Witness (Harvey Weintraub) dated September 20, 2006 (Vol. 3).

22. Attached as Exhibit H to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Schering Corporation, Schering-Plough Corporation and Warrick Pharmaceuticals Corporation is a true and correct copy of Exhibit 737 to the Deposition of Harvey J. Weintraub dated February 13, 2003.

Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Watson Pharmaceuticals, Inc. and Watson Pharma, Inc.

23. Attached as Exhibit A to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Watson Pharmaceuticals, Inc. and Watson Pharma, Inc. is a true and correct copy of excerpts from the transcript of the Deposition of Mark Hartman dated June 3, 2009.

24. Attached as Exhibit B to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Watson Pharmaceuticals, Inc. and Watson Pharma, Inc. is a true and correct copy of excerpts from the transcript of the Deposition of Watson Pharmaceuticals, Inc.'s 30(b)(6) Witness (Napoleon Clark) dated May 4, 2009.

25. Attached as Exhibit C to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Watson Pharmaceuticals, Inc. and Watson Pharma, Inc. is a true and correct copy of excerpts from the transcript of the Deposition of Kathleen Karlsson dated May 5, 2009.

26. Attached as Exhibit D to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Watson Pharmaceuticals, Inc. and Watson Pharma, Inc. is a true and correct copy of excerpts from the transcript of the Deposition of Watson Pharmaceuticals, Inc.'s 30(b)(6) Witness (Napoleon Clark) dated June 28, 2007.

27. Attached as Exhibit E to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Watson Pharmaceuticals, Inc. and Watson Pharma, Inc. is a true and correct copy of Exhibit 7 to the Deposition of Watson Pharmaceuticals, Inc.'s 30(b)(6) Witness (Andrew Boyer) dated May 4, 2009.


28. Attached as Exhibit F to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Watson Pharmaceuticals, Inc. and Watson Pharma, Inc. is a true and correct copy of Exhibit 22 to the Deposition of Andrew Boyer, dated May 4, 2009.

Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Wyeth

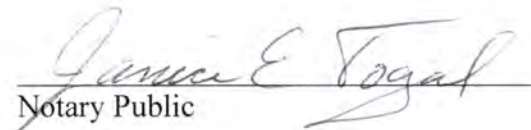
29. Attached as Exhibit A to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Wyeth is a true and correct copy of an email from Wyeth's counsel, Kelly J. Davidson to plaintiffs' counsel, Joanne M. Cicala transmitting Wyeth AMP data in response to plaintiffs' discovery requests.

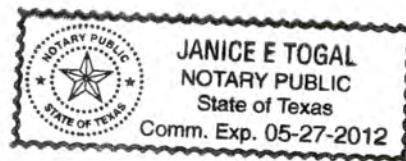
30. Attached as Exhibit B to Plaintiffs' Reply Local Rule 56.1 Statement of Undisputed Material Facts as to Wyeth is a true and correct copy of excerpts from the transcript of the Deposition of Wyeth Pharmaceuticals, Inc.'s 30(b)(6) Witness (Richard Truex) dated June 19, 2008.

Dated: June 30, 2009


Joanne M. Cicala

Swore before me on this 30th day of
June, 2009


Notary Public



CERTIFICATE OF SERVICE

I, James P. Carroll Jr., hereby certify that I caused a true and correct copy of the foregoing AFFIDAVIT OF JOANNE M. CICALA IN SUPPORT OF PLAINTIFFS' REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT ON ISSUES RELATING TO THE FEDERAL UPPER LIMIT AND UNDER NEW YORK SOCIAL SERVICES LAW § 145-B, to be served on counsel of record via electronic service pursuant to paragraph 11 of Case Management Order No. 2, by sending a copy to LexisNexis File and Serve for posting and notification to all parties.

Dated: June 30, 2009

/s/
James P. Carroll, Jr.
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